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No. 97-463

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

*Petitioner*,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

*Respondent*.

**On Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## BRIEF FOR PETITIONER

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## QUESTION PRESENTED

Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," permits a union to sue in federal court to declare a collective bargaining agreement voidable in the absence of any alleged violation of the agreement?

## PARTIES TO THE PROCEEDINGS

The parties to the proceedings before the United States Court of Appeals for the Third Circuit were the AVCO Corporation and the United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787.*

Pursuant to Supreme Court Rule 29.6, petitioner AVCO Corporation states that it is a wholly-owned subsidiary of Textron, Inc. All of AVCO Corporation's subsidiaries are wholly-owned.

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*The complaint named the defendant as Textron Lycoming Reciprocating Engine Division, AVCO Corporation. Because Textron Lycoming is an unincorporated division of the AVCO Corporation, the actual defendant in this case is the AVCO Corporation. *See, e.g.*, T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473, at 78 (rev. ed. 1992).



## TABLE OF CONTENTS

Page

QUESTION PRESENTED . . . . . i

PARTIES TO THE PROCEEDINGS . . . . . ii

TABLE OF AUTHORITIES . . . . . v

OPINIONS BELOW . . . . . 1

JURISDICTION . . . . . 1

STATUTES INVOLVED . . . . . 1

STATEMENT . . . . . 2

SUMMARY OF ARGUMENT . . . . . 8

ARGUMENT . . . . . 10

I. SECTION 301 WAS ENACTED FOR THE IMPORTANT, BUT LIMITED, PURPOSE OF REDRESSING VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS . . . . . 10

A. Congress Enacted The National Labor Relations Act To Promote The Collective Bargaining Process And To Centralize Regulation Of That Process In The National Labor Relations Board . . . . . 11

B. Section 301 Was Enacted To Ensure That Collective Bargaining Agreements Could Be Enforced And That Violations Of Those Agreements Would Be Redressed In A Manner Consistent With Federal Labor Policy . . . . . 15

II. THE UNION'S CLAIM DOES NOT FALL WITHIN THE LIMITED SCOPE OF SECTION 301 . . . . . 20

A. The Plan Language of Section 301(a) Grants Federal Jurisdiction Only Over Suits That Allege The Violation Of A Collective Bargaining Agreement . . . . . 20

## TABLE OF CONTENTS
## (Continued)


Page

B. The Legislative History Confirms The Limited Scope Of Section 301(a) . . . . . 23

C. Extending Federal Jurisdiction Beyond The Limits Of The Plain Language Of Section 301(a) Would Bring The Federal Courts Into Unnecessary And Unjustified Conflict With The Labor Board . . . . . 26

D. The Union Here Does Not Allege Any Violation Of A Collective Bargaining Agreement . . . . . 31

III. IN ANY EVENT, SECTION 301(a) DOES NOT PERMIT THIS SUIT, WHICH IS IN ESSENCE A TORT CLAIM FOR FRAUD . . . . . 34

CONCLUSION . . . . . 39




## TABLE OF AUTHORITIES


Page

Cases

*A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers*, 799 F.2d 142 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987) . . . . . 23

*Allis-Chalmers Corp. v. Lareck*, 471 U.S. 202 (1985) . . . . 35

*Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971) . . . . . *passim*

*Architectural Fiberglass*, 165 NLRB 238 (1967) . . . . . 33

*Ardestani v. INS*, 502 U.S. 129 (1991) . . . . . 22

*AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643 (1986) . . . . . 17

*Bread Political Action Comm. v. FEC*, 455 U.S. 577 (1982) . . . . . 22

*Brown v. Gardner*, 513 U.S. 115 (1994) . . . . . 22

*Cheng Fan Kwok v. INS*, 392 U.S. 206 (1968) . . . . . 22

*Commissioner of Internal Revenue v. Schleier*, 515 U.S. 323 (1995) . . . . . 30, 36

*Communication Workers v. Beck*, 487 U.S. 735 (1988) . . . . . 19, 35

*Connecticut National Bank v. Germain*, 503 U.S. 249 (1992) . . . . . 21, 22

*Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980) . . . . . 22

*Corvallis Sand & Gravel Co. v. Hoisting Portable Engineers*, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967) . . . . . 23

*Demarest v. Manspeaker*, 498 U.S. 184 (1991) . . . . . 22

*Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962) . . . . *passim*

*Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964) . . . . . 34

*First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981) . . . . . 34

*Garcia v. United States*, 469 U.S. 70 (1984) . . . . . 22

## TABLE OF AUTHORITIES
(Continued)

Page

*Garner v. Teamsters Local Union No. 776*, 346 U.S. 485 (1953) . . . . . 13, 14
*Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974) . . . . . 27
*Good Samaritan Hospital v. Shalala*, 508 U.S. 402 (1993) . . . . . 22
*H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970) . . . . . 3, 14, 27
*Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972) . . . . . 23
*Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989) . . . . . 23
*Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) . . . . . 19, 28, 37
*International Brotherhood of Electrical Workers v. Sign-Craft, Inc.*, 864 F.2d 499 (7th Cir. 1988) . . . . . 23
*International Longshoremen's Ass'n v. Davis*, 476 U.S. 380 (1986) . . . . . 14
*Kaiser Steel Corp. v. Mullins*, 455 U.S. 72 (1982) . . . . . 19
*Kokken v. Guardian Life Insurance Co.*, 511 U.S. 375 (1994) . . . . . 22
*Kolentus v. AVCO Corp.*, 798 F.2d 949 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987) . . . . . 33, 36
*Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988) . . . . . 27
*Livadas v. Bradshaw*, 512 U.S. 107 (1994) . . . . . 35
*Local 100, United Association of Journeymen & Apprentices v. Borden*, 373 U.S. 690 (1963) . . . . . 35
*Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962) . . . . . 18, 19, 28
*McNally Pittsburgh, Inc. v. International Association of Iron Workers*, 812 F.2d 615 (10th Cir. 1987). . . . . 23
*Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724 (1985) . . . . . 27



## TABLE OF AUTHORITIES
(Continued)

Page

*Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291 (1995) . . . . . 22
*Moskal v. United States*, 498 U.S. 103 (1990) . . . . . 20
*National Licorice Co. v. NLRB*, 309 U.S. 350 (1940) . . 6, 30
*NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967) . . 33, 36
*NLRB v. C&C Plywood*, 385 U.S. 421 (1967) . . . . . 17, 18
*NLRB v. J.H. Rutter-Rex Manufacturing Co.*, 396 U.S. 258 (1969) . . . . . 6, 29
*NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) . . . . . 11
*NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953) . . . . 13
*NLRB v. Strong Roofing & Insulating Co.*, 393 U.S. 357 (1969) . . . . . 15
*Palmore v. United States*, 411 U.S. 389 (1973) . . . . . 22
*Parker v. Connors Steel Co.*, 855 F.2d 1510 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989) . . . . . 33, 36
*Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965) . . . . 7
*Retail Clerks International Association, Local Unions Nos. 128 & 663 v. Lion Dry Goods, Inc.*, 369 U.S. 17 (1962) . . . . . 30, 31
*Roehm v. Horst*, 178 U.S. 1 (1899) . . . . . 32
*Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) . . . . . 23
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*Sears, Roebuck & Co. v. San Diego District Council of Carpenters*, 436 U.S. 180 (1978) . . . . . 11, 13
*Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d 1279 (6th Cir. 1986) . . . . . 33, 36
*Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), *overruled on other grounds, Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) . . . . . 19

## TABLE OF AUTHORITIES
(Continued)

Page

*Skelly Oil Co. v. Philips Petroleum Co.*, 339 U.S. 667 (1950) . . . . . 32
*Smith v. Evening News Ass'n*, 371 U.S. 195 (1962) . . . . . 19, 37, 38
*Steelworkers v. Rawson*, 495 U.S. 362 (1990) . . . . . 35
*Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) . . . . . *passim*
*United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29 (1987) . . . . . 27
*United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) . . . . . 22
*United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) . . . . . 27
*United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) . . . . . 14, 15, 27
*Utah Junk Co. v. Porter*, 328 U.S. 39 (1946) . . . . . 22
*Vegelahn v. Gunter*, 44 N.E. 1077 (Mass. 1896) . . . . . 12
*Walters v. Metropolitan Educational Enterprises, Inc.*, 117 S. Ct. 660 (1997) . . . . . 21
*Waymouth Farms, Inc.*, Nos. 18-CA-12766 and 12891, 1997 WL 693024 (NLRB Oct. 31, 1997) . . . . . 30
*West Virginia University Hospitals Inc. v. Casey*, 499 U.S. 83 (1991) . . . . . 21
*William E. Arnold Co. v. Carpenters District Council*, 417 U.S. 12 (1974) . . . . . 17, 19
*Wisconsin Department of Industry v. Gould Inc.*, 475 U.S. 282 (1986) . . . . . 30, 33

**Statutes**

28 U.S.C. § 1254(1) . . . . . 1
28 U.S.C. § 1291 . . . . . 7



## TABLE OF AUTHORITIES
(Continued)

Page

Labor-Management Relations Act, 29 U.S.C.
§ 151 *et seq.* . . . . . 1, 9
29 U.S.C. § 151 . . . . . 11, 15
29 U.S.C. § 157 . . . . . 11
29 U.S.C. § 158 . . . . . *passim*
29 U.S.C. § 160 . . . . . 12, 13
29 U.S.C. § 161 . . . . . 12
29 U.S.C. § 185 . . . . . *passim*

**Legislative History**

92 Cong. Rec. 5412 (1946) . . . . . 25
92 Cong. Rec. 5930 (1946) . . . . . 24
93 Cong. Rec. 3614 (1947) . . . . . 24
93 Cong. Rec. 3656 (1947) . . . . . 32
93 Cong. Rec. 5014 (1947) . . . . . 16
H.R. 4908, 79th Cong., 2d Sess., § 10 (1946), *reprinted in Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) . . . . . 24
H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess (1947), *reprinted in I Legislative History of the Labor-Management Relations Act, 1947*, 505 (1959) . . . . . 17
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## TABLE OF AUTHORITIES
(Continued)


Page

**Miscellaneous Authorities**

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Research Committee of the National Academy of Arbitrators, *Labor Arbitration in America: the Profession and Practice* (1992) . . . . . 27

Restatement (Second) of Contracts § 164 (1981) . . . . . 33, 35

Restatement (Second) of Contracts § 250 (1981) . . . . . 32

Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. 529 (1963) . . . . . 26, 28, 29


## BRIEF FOR PETITIONER

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a) is reported at 117 F.3d 119. The order of the United States District Court for the Middle District of Pennsylvania (Pet. App. 14a), which contains the district court's opinion dismissing the complaint in this case, is unreported.

### JURISDICTION

The Third Circuit entered its opinion on July 7, 1997. Judgment (Pet. App. 19a) was entered on July 29, 1997. The petition for certiorari was filed on September 12, 1997 and granted on November 14, 1997 (J.A. 30). This Court has jurisdiction under 28 U.S.C. § 1254(1).

### STATUTES INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). Section 301 is reprinted in its entirety at Pet. App. 21a.

Section 8(a) of the National Labor Relations Act (NLRA) provides in pertinent part:

> It shall be an unfair labor practice for an employer —
>
> * * *

> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

*Id.* § 158(a).

Section 8(d) provides in pertinent part:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

*Id.* § 158(d).

## STATEMENT[1]

Congress has enacted a "complex and interrelated federal scheme of law, remedy, and administration" to regulate labor relations in this country and entrusted a "specific and specially constituted tribunal," the National Labor Relations Board, with primary authority for developing and enforcing this system. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242-43 (1959). Recognizing the strong congressional desire for "uniform application" of federal labor law, this Court has held that wherever conduct that arguably constitutes an unfair labor practice is at issue, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

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[1] Because the district court dismissed the complaint for lack of subject matter jurisdiction based upon a facial challenge, this statement treats the facts alleged in the complaint as true. *See, e.g.*, 2 *Moore's Federal Practice* § 12.30[4], at 12-38 (3d ed. 1997).



While the Board's primary function is to "supervise the collective-bargaining process," *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970), it has no authority to enforce the substantive terms of collective bargaining agreements. *See, e.g.*, *Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-11 (1962). In the area of contract enforcement, Congress carved out a limited exception to the Board's authority and "ma[d]e collective bargaining agreements enforceable only in the courts." *Id.* at 511. Accordingly, Section 301(a) of the Taft-Hartley or Labor-Management Relations Act of 1947 grants federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a).

This case presents an important question: whether Section 301 confers jurisdiction where no contractual violation is alleged but "disputes of a contractual nature" relating to the negotiation of a collective bargaining agreement are present. The decision below — which permits suits under Section 301 where no contractual violation is alleged — creates a new area of overlapping jurisdiction between the federal courts and the Board, thereby increasing the potential for conflict and frustrating significant congressional policies.

*Background* — Petitioner manufactures airplane engines at a plant in Williamsport, Pennsylvania. J.A. 16. Respondent, Local 787 of the United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW" or "union"), represents approximately 500 employees at that plant. J.A. 16. In 1993, before formal negotiations over a new collective bargaining agreement began, respondent union requested any written reports, projections, or other documents concerning petitioners' future subcontracting plans. J.A. 17. When formal negotiations began in January of 1994, the union renewed that request. J.A. 17. Although petitioner allegedly did not supply

any information concerning subcontracting,[2] the union did not pursue this request nor did it otherwise raise the issue of subcontracting during the negotiations over the collective bargaining agreement. J.A. 17-18.

As a result of these negotiations, the parties agreed to continue in force a prior memorandum agreement concerning the subcontracting of production work. J.A. 14-15. That memorandum recognized petitioner's right to subcontract and required only that it provide seven days notice of any subcontracting:

> If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Production employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house.

J.A. 15. The new collective bargaining agreement, which incorporated the production subcontracting memorandum, was signed on April 1, 1994 and expired on April 4, 1997. JA 13.[3]

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[2] A factual dispute exists on this issue. In a submission to the NLRB on November 10, 1995 in connection with charges brought by the union, *see infra* p. 5, Textron Lycoming provided a letter sent to the union in December 1993. In that letter, Textron Lycoming disclosed that it was currently considering outsourcing six categories of parts and that in the years ahead "every aspect of the manufacturing process will be examined to determine make or buy decisions." Letter from Frank X. Ratchford to Robert T. McHugh, Dec. 16, 1993, at 2, attached as Ex. A to Letter from Don A. Banta to Joseph Cionzynski, Nov. 10, 1995.

[3] Although the Agreement expired on April 4, 1997, J.A. 13, the expiration of the Agreement has not eliminated the dispute between the parties.



Like most such agreements, the Textron Lycoming-UAW collective bargaining agreement contained both a grievance procedure culminating in binding arbitration and a no-strike clause. J.A. 7-12; *see generally* BNA, *Basic Patterns in Union Contracts*, 37, 91 (14th ed. 1995) (noting that 99% of sampled union contracts contain arbitration clauses and 94% contain no-strike pledges). The grievance procedure had four steps beginning with informal consultation with a company foreman and a union steward and progressing eventually, when necessary, to a "final and binding" arbitration before an arbitrator from the American Arbitration Association. J.A. 7-10. In the no-strike clause, the union "agree[d] that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interference with, work during the term of this Agreement, for any reason." J.A. 12. Petitioner similarly agreed that there would be no lockouts against union members during the term of the agreement. J.A. 12.

In June 1994, pursuant to the production subcontracting memorandum agreement, petitioner announced that it was planning to subcontract out the manufacturing of engine parts formerly produced at its Williamsport plant. J.A. 18. Petitioner informed the union that, when this decision was fully implemented, it estimated that approximately half of the employees represented by the union would be laid off. J.A. 18-19.

*The Unfair Labor Practice Charges* — In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board under Section 8 of the NLRA, which makes it is an unfair labor practice to "refuse to bargain collectively" or to fail to "confer in good faith." 29 U.S.C. § 158(a) & (d). In that charge, the union alleged that Textron Lycoming had failed to disclose information concerning subcontracting of "bargaining unit work." Charge, *Textron Lycoming Reciprocating Engine Division*, Case No. 4-CA-23285 (NLRB Nov. 22, 1994), and in a later amendment, the union sought a "declaration that the existing collective bargaining agreement is voidable at its option." Amended Charge, *Textron*

*Lycoming Reciprocating Engine Division*, Case No. 4-CA-23285 (NLRB Oct. 3, 1995) (Attachment A). The Board has the authority to void contracts in unfair labor practice cases arising out of the bargaining process and to "make whole" employees by awarding backpay and other relief. *See, e.g., NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263 (1969); *National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940).

One of the union's apparent goals in filing these charges was to void the collective bargaining agreement so that it could engage in, or, at least, threaten to engage in, a strike otherwise barred by the no-strike clause in the agreement. Although the Board alleged that the subcontracting clause was "fraudulently procured" as a result of Textron Lycoming's failure to disclose information about "contemplated subcontracting," J.A. 25-26, it did not seek to void the collective bargaining agreement. Instead, the Board sought an order preventing petitioner from enforcing the subcontracting memorandum and requiring it to bargain in good faith about subcontracting. J.A. 26. Textron Lycoming and the Board have reached a tentative settlement agreement on this complaint,[4] which is currently the subject of an administrative appeal by the union.

*The Proceedings Below* — On November 16, 1995, one year after filing unfair labor practice charges with the Board, the union filed a complaint in the United States District Court for the Middle District of Pennsylvania seeking nearly identical relief on nearly identical grounds.

In the complaint, which asserted federal jurisdiction under Section 301, the union requested compensatory damages, punitive damages, and a declaration "that the existing collective bargaining agreement between the parties is voidable at the option of the [union]." J.A. 17, 19. The union alleged that in negotiating the 1994 agreement, it demanded documents concerning the

[4] *See* letter from Francis W. Hoeber to Robert T. McHugh, May 17, 1997 (transmitting proposed settlement agreement).



company's plans to move or subcontract out bargaining unit work. J.A. 17. According to the union, an agent of petitioner represented in January 1994 that he knew of no plans to subcontract out bargaining unit work, promised to ensure that his knowledge was correct, and then never raised the issue again. J.A. 17-18. The union also alleged that during the negotiations which ended sometime in March 1994, petitioner was formulating a secret plan to subcontract out bargaining unit work. J.A. 18.

The union asserted that, if it had known about this plan, it would have made specific demands relating to subcontracting and that it would not have agreed to the agreement's no-strike clause. J.A. 18-19. Indeed, the union conceded before the district court that it was seeking to have the collective bargaining agreement declared voidable in order to credibly threaten to strike. Pl. Surreply at 2. Significantly, the complaint did not allege that petitioner or the union had violated the collective bargaining agreement.

The district court dismissed the complaint for lack of subject matter jurisdiction. Pet. App. 17a-18a. The court ruled that Section 301(a) grants federal courts jurisdiction only over "[s]uits for *violation* of contracts between an employer and a labor organization" and that the union's claim was based on conduct during the negotiation of a collective bargaining agreement, not any violation of an agreement. Pet. App. 17a (emphasis added). The district court also found that the union was in essence claiming that petitioner "negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB." Pet. App. 18a.[5]

Respondents appealed pursuant to 28 U.S.C. § 1291, and the Third Circuit reversed. While it recognized that the First, Fourth

[5] Because the district court found no subject matter jurisdiction over this case, it did not reach Textron Lycoming's alternative argument that the complaint should be dismissed for failure to invoke the collective bargaining agreement's grievance and arbitration procedures. Pet. App. 4a; *see generally Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53 (1965).

and Seventh Circuits have found that jurisdiction under Section 301(a) is limited to suits alleging violations of a collective bargaining agreement and that no such violation was alleged in this case, the Third Circuit nonetheless held that there was jurisdiction over the union's claim under Section 301(a). Pet. App. 7a-11a. Largely ignoring the language of the statute, the court based its jurisdictional holding on the supposed purpose of Section 301(a). According to the Third Circuit, "by enacting § 301(a) Congress intended that courts resolve disputes of a contractual nature, including disputes over [a collective bargaining] agreement's very existence." Pet. App. 9a-10a. Since a dispute over whether an agreement was secured by fraudulent inducement "goes to the heart of the enforceability of the collective bargaining agreement between the parties," Pet. App. 12a, the court concluded that the union's suit was of a contractual nature and that Section 301(a) confers jurisdiction over it. Pet. App. 9a-11a.

The decision below found this conclusion buttressed by the fact that the union could have raised fraudulent inducement as a defense had a violation of the agreement occurred and Textron Lycoming sued to enforce the collective bargaining agreement. Pet. App. 12a.

## SUMMARY OF ARGUMENT

1. This case is governed by the plain language of Section 301(a) of the National Labor Relations Act, 29 U.S.C. § 185(a). That language is simple and straightforward: it authorizes the federal courts to hear "[s]uits for violation of contracts between an employer and a labor organization" such as collective bargaining agreements. It does not confer jurisdiction over suits that do not allege violation of a collective bargaining agreement or other covered contract. Since the union does not allege the violation of the agreement here, Section 301(a) is plainly inapplicable.

Any other conclusion would render the statute's words of limitation — "for violation" — meaningless. It is, however, well-settled that statutes must be interpreted so as to give each word



operative effect. The plain meaning rule applies with special force here: because the federal courts are courts of limited jurisdiction, jurisdictional provisions such as Section 301(a) must be construed narrowly, with fidelity to the terms chosen by Congress.

The analysis of Section 301(a) need not proceed any further. Because Section 301(a) speaks with clarity to the question presented in this case, there is no need to consult the legislative history or federal labor policy. Both, however, support the plain language of the section. The legislative history shows that Congress intended Section 301(a) to apply only in the event of a breach and that Congress considered misconduct during the bargaining process and the violation of collective bargaining agreements to be distinct categories of conduct. Extending the jurisdiction of the federal courts to cover misconduct during the collective bargaining process would unnecessarily and unjustifiably intrude on the normally exclusive authority of the National Labor Relations Board over the process of collective bargaining.

In short, Section 301(a) confers federal jurisdiction only over suits alleging the violation of a collective bargaining agreement. For this reason, the union's suit, which does not allege such a violation, was properly dismissed by the district court for lack of subject matter jurisdiction.

2. Even if Section 301(a) covered suits of a "contractual nature" as the lower court asserted, it would not permit the union's claim to go forward. In enacting the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, Congress entrusted an administrative agency, the National Labor Relations Board, with broad authority over the collective bargaining process. Recognizing that one of Congress' goals in doing so was to ensure uniform application of federal labor policy, this Court has repeatedly found the Board's authority over the collective bargaining process to be generally exclusive. *See, e.g., San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959).

It is, of course, true that this Court has held that breach-of-contract claims brought under Section 301(a) are not subject to *Garmon* preemption. However, the union's claim is in essence a tort claim for fraud based upon alleged misconduct during the collective bargaining process, and falls squarely within the Board's jurisdiction and is therefore preempted. As this Court recognized in *Amalgamated Association of Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971), Section 301(a) only protects claims from preemption under *Garmon* when those claims require the interpretation and application of the terms of a collective bargaining agreement. Since the union's claim does not do so, it would be preempted if it fell within Section 301(a).

## ARGUMENT

### I. SECTION 301 WAS ENACTED FOR THE IMPORTANT, BUT LIMITED, PURPOSE OF REDRESSING VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS.

This case is governed by the language of Section 301(a) of the National Labor Relations Act (NLRA), 29 U.S.C. § 185(a). That language is plain on its face: it confers subject matter jurisdiction upon the federal courts only over "[s]uits for violation of contracts between an employer and a labor organization" such as collective bargaining agreements.

Section 301 was enacted in 1947 because, despite the central role that collective bargaining agreements played in federal law, there were still obstacles at that time to enforcing such agreements. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 512-13 (1962); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453-56 (1957). The National Labor Relations Board, while possessing the authority to regulate the collective bargaining process, lacked the authority to enforce the agreements that resulted from that process. *See Dowd Box*, 368 U.S. at 511-12. While the courts technically could enforce such agreements, there were obstacles, both substantive and procedural, to their enforcement. *See, e.g.*, R. Gorman, *Basic Text on Federal Labor Law*, 543-44 (1976). In order to understand Congress' solution to these problems, and the scope of the limited jurisdiction Section 301 confers upon the federal courts, it is useful to review the history of that provision and the National Labor Relations Act it amended.



#### A. Congress Enacted The National Labor Relations Act To Promote The Collective Bargaining Process And To Centralize Regulation Of That Process In The National Labor Relations Board.

As this Court has recognized, "The enactment of the NLRA in 1935 marked a fundamental change in the Nation's labor policies." *Sears, Roebuck & Co. v. San Diego Dist. Council of Carpenters*, 436 U.S. 180, 190 (1978). The NLRA was based on the theory that "recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace." *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 42 (1937). Indeed, the Act explicitly states that the "policy of the United States" is to promote industrial peace "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of . . . self-organization." 29 U.S.C. § 151. The NLRA therefore gives employees covered by the Act the right "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in collective activities." *Id.* § 157.

The NLRA was also meant to "restructure fundamentally the processes" of American labor law. *Amalgamated Ass'n of Street, Electric Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 288 (1971). "By the 1930s, it had been clear for some time that the courts could not be expected to provide answers to the problems presented by the labor movement." 1 P. Hardin, *The Developing Labor Law* 7 (3d ed. 1992). As this Court has noted, the NLRA was based on the "perceived incapacity of common-law courts and state legislatures . . . to provide an informed and coherent basis for stabilizing labor relations conflict." *Lockridge*,

403 U.S. at 286. The standards utilized by the courts in labor cases were "vague, inconsistent, and preeminently dependent upon the predilections of the presiding judges." Gorman, *Basic Text on Federal Labor Law* 2. So, too, traditional judicial remedies, particularly the injunction, proved to be ill-suited to the complexities of labor disputes.[6] And, as Justice Holmes observed while sitting on the Massachusetts Supreme Judicial Court, labor disputes turn upon "considerations of policy and of social advantage," which courts were ill-equipped to weigh in the absence of instruction from elected legislatures. *Vegelahn v. Guntner*, 44 N.E. 1077, 1080 (Mass. 1896) (Holmes, J., dissenting).

In enacting the NLRA in 1935, Congress sought to avoid the perceived shortcomings of the judicial process by "entrust[ing] the administration of labor policy for the Nation to a centralized administrative agency," the National Labor Relations Board. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). The primary purpose of the Board is to "supervise the collective-bargaining process." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970). The Act therefore empowers the Board to investigate, prosecute, and adjudicate "unfair labor practice" charges. *See* 29 U.S.C. §§ 158, 160-61. Unfair labor practices are broadly defined by the Act, giving the Board the authority to develop "a body of case law that would govern large portions of the relationship between labor and management." W. Gould, *A Primer on American Labor Law* 29 (3d ed. 1993).[7] The NLRA also confers upon the Board broad discretion to "take such

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[6] *See* Hardin, *The Developing Labor Law* 6-7; *see generally* F. Frankfurter & N. Greene, *The Labor Injunction* 17-24, 53-60 (1930).

[7] Although the NLRA was initially focused upon securing the right of employees to organize and bargaining collectively, in 1947, as part of the Taft-Hartley or Labor-Management Relations Act, Congress made certain union misconduct, including the refusal to bargain in good faith, unfair labor practices. *See* 29 U.S.C. §158(b); *see generally* H. Millis & E. Brown, *From the Wagner Act to the Taft-Hartley* 271-394 (1950).



affirmative action . . . as will effectuate the policies" of the Act in remedying misconduct during the collective bargaining process and other unfair labor practices. 29 U.S.C. § 160(c); *see generally NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 346-47 (1953).

Finding implicit in the NLRA a strong congressional "interest in uniform development of the new national labor policy," this Court has held that the Board has generally exclusive authority over matters within its regulatory jurisdiction. *Sears*, 436 U.S. at 191. The rationale for this exclusive jurisdiction, which has become known as the *Garmon* preemption doctrine, was articulated by Justice Jackson, writing for an unanimous Court, more than forty years ago:

> Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order.

*Garner v. Teamsters Local Union No. 776*, 346 U.S. 485, 490 (1953).

In so doing, this Court reasoned, "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Id.* Accordingly, this Court held that the Board has generally exclusive authority over matters within its jurisdiction. *See id.* at 498-99.

As later elaborated, the *Garmon* preemption doctrine applies to all matters even arguably within the Board's jurisdiction:

> When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

*Garmon*, 359 U.S. at 245.

The *Garmon* doctrine is designed to protect not only the Board's authority to set standards, but also its power to fashion remedies.[8] As this Court noted: "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner*, 346 U.S. at 490-91. Furthermore, unlike the traditional administrative law doctrine of primary jurisdiction, the *Garmon* doctrine requires more than just initial referral to the Board; it strips courts entirely of the authority to hear claims within the primary authority of the Board. *See International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986); *Sears*, 436 U.S. at 199 n.29.

The Board's authority, though broad and generally exclusive, is limited to the process of collective bargaining; it does not extend to regulating the actual terms of the agreements reached in collective bargaining. As this Court has recognized, "It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties." *H.K. Porter Co.*, 397 U.S. at 107-08. The process of collective bargaining is "an effort to erect a system of industrial self-government." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960). Ideally, it results in more than a mere contract: it creates a "generalized code to govern a myriad of cases which the draftsmen cannot wholly

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[8] *See, e.g., Garmon*, 359 U.S. at 243 (prohibiting "conflict in its broadest sense," that is, "conflict with a complex and interrelated federal scheme of law, remedy, and administration").



anticipate," *id.* at 578, which in turn fosters a "relationship governed by an agreed-upon rule of law" rather than "the relative strength at any given moment of the contending forces." *Id.* at 580. Federal labor policy is premised upon the assumption that such relationships, entered into voluntarily and cooperatively, are more likely to lead to a stable and lasting peace than any governmentally-coerced cessation of hostilities. *See* 29 U.S.C. § 151.

This policy is most completely effectuated where, as here, the parties enter into collective bargaining agreements that contain both agreements to arbitrate and no-strike clauses. *See Warrior & Gulf*, 363 U.S. at 578 & n.4. Agreements to arbitrate act as a "*quid pro quo* for an agreement not to strike." *Textile Workers Union v. Lincoln Mills*, 353 U.S. at 455. As this Court has recognized, "arbitration is the substitute for industrial strife" (*Warrior & Gulf*, 363 U.S. at 578) and is "at the very heart of the system of industrial self-government" because it "mold[s] a system of private law for all the problems which may arise" under a collective bargaining agreement. *Id.* at 581.

### B. Section 301 Was Enacted To Ensure That Collective Bargaining Agreements Could Be Enforced And That Violations Of Those Agreements Would Be Redressed In A Manner Consistent With Federal Labor Policy.

In 1947, when Section 301 was passed as part of the Taft-Hartley Act, there were numerous obstacles to enforcing collective bargaining agreements. The Board did not have any statutory or other authority to enforce such agreements. *See NLRB v. Strong Roofing & Insulating Co.*, 393 U.S. 357, 360 (1969); *Dowd Box*, 368 U.S. at 510-11. Nor were satisfactory remedies available in the courts. Some jurisdictions still subscribed to the common-law view that collective bargaining agreements were only moral obligations and therefore not enforceable contracts, *see* H. Millis & E. Brown, *From the Wagner Act to Taft-Hartley* 503 (1950), and others treated promises to arbitrate in agreements that were still "executory" — that is, that had yet to be fully performed by the party seeking to

enforce them — as unenforceable. *See Lincoln Mills*, 353 U.S. at 456; Gorman, *Basic Text on Federal Labor Law* 544. Furthermore, it was impractical to sue labor organizations in many states where unincorporated associations such as unions were not suable as entities. *See* S. Rep. No. 105, 80th Cong., 1st Sess. 16, *reprinted in* I *Legislative History of the Labor-Management Relations Act, 1947* 422 (1959) [hereinafter, "*Legislative History*"]. In such states, the only way to sue a union to enforce a collective bargaining agreement was to serve each individual member of the union, an "almost impossible process." *Id.; accord* 93 Cong. Rec. 5014 (1947) (Sen. Ball).

Congress found these obstacles to the enforcement of collective bargaining agreements to be an unacceptable threat to the NLRA's policy of achieving industrial peace through the promotion of collective bargaining agreements:

> The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

S. Rep. No. 105 at 16, *reprinted in* I *Legislative History* 422. Congress saw that "[s]tatutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace." *Id.* at 17, *reprinted in* I *Legislative History* 423.

There was a broad consensus among the supporters of the Taft-Hartley Act that collective bargaining agreements should be enforceable in the federal courts. As the Senate report noted, "to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting commerce should be enforceable in the



Federal courts." S. Rep. No. 105 at 16, *reprinted in Legislative History* 422. Courts and arbitrators, Congress recognized, were best suited to construing the terms of collective bargaining agreements. *See AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 650 (1986); *Lockridge*, 403 U.S. at 300; *see also William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 18 (1974) (noting the "congressional purpose that § 301 suits in state and federal courts should be the primary means for promoting collective bargaining that ends with agreements not to strike") (quotation omitted).

Congress considered giving the Board concurrent authority over the enforcement of collective bargaining agreements. The Senate version of the Taft-Hartley Act made it an unfair labor practice to "violate the terms of a collective bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration." S. 1126, 80th Cong., 1st Sess., tit. I (1947) (proposed Sections 8(a)(6) & 8(b)(5)), *reprinted in* I *Legislative History* 111, 114. In conference, however, this provision was deleted. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 42 (1947), *reprinted in* I *Legislative History* 546. The conference report explained that "[o]nce parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." *Id.*

In refusing to grant the Board authority to enforce collective bargaining agreements, Congress was acting upon the principle that the NLRA "does not undertake government regulation of wages, hours, or working conditions," but instead "seeks to provide a means by which agreement may be reached with respect to them." *NLRB v. C & C Plywood*, 385 U.S. 421, 427 (1967) (quotation omitted).

> To have conferred upon the National Labor Relations Board generalized power to determine the rights of parties under all collective bargaining agreements would have been a step toward governmental regulation of the terms of those

agreements. We view Congress' decision not to give the Board that broad power as a refusal to take this step.

*Id.* at 427-28.

Having decided to leave the enforcement of collective bargaining agreements exclusively to the courts, Congress carefully defined that jurisdiction by limiting it to "[s]uits for violation of contracts between an employer and a labor organization, or between any such labor organizations."[9] *Id.* § 185(a). The consequences of this jurisdictional grant were not merely procedural. One of the important objectives of Congress in enacting Section 301 was to secure uniform federal rules for enforcing collective bargaining agreements. *See Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962).[10] This Court has therefore interpreted Section 301 to authorize the courts to fashion a federal common law for the interpretation and application of collective bargaining agreements, derived "from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456-57. Thus, where Section 301 applies, the rights of the parties are determined by federal law.

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[9] Congress also enacted provisions designed to "fill the gaps in the jurisdictional law of some of the States." *Dowd Box Co.*, 368 U.S. at 512. It provided that labor unions "may sue or be sued as an entity." 29 U.S.C. § 185(b). It stated that service upon an officer or agent of a labor organization "shall constitute service upon the labor organizations" and that labor organizations shall be deemed present wherever their "duly authorized officers or agents" are representing employee members. *Id.* §§ 185(c) & (d); *see also id.* § 185(e) (providing that, in determining whether an individual is a union agent under Section 301, actual authorization of the individual's actions is not necessary). Section 301 provided as well that money judgments against labor organizations shall be enforceable only against the organizations and not against individual members. *See id.* § 185(b).

[10] This Court has, however, held that Congress did not intend to prevent state courts from also enforcing collective bargaining agreements. *See Dowd Box*, 368 U.S. at 507-13.



Although the Taft-Hartley Act continued generally the exclusive jurisdiction of the Board over the collective bargaining process and gave the courts jurisdiction to enforce the agreements, some overlap in the two jurisdictions was inevitable. Finding this limited overlap tolerable, this Court has, on several occasions, held the *Garmon* preemption doctrine inapplicable to suits alleging violations of collective bargaining agreements. *See, e.g., Smith v. Evening News Ass'n*, 371 U.S. 195, 197-98 (1962).[11] As this Court explained,

> The strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Act.

*Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976) (citations omitted). Moreover, in enforcing agreements, courts may adjudicate defenses arising under the NLRA. *See Communication Workers v. Beck*, 487 U.S. 735, 743 (1988); *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-86 (1982). Conversely, the Board must sometimes interpret collective bargaining agreements in order to adjudicate unfair labor practice charges. *See NLRB v. C&C Plywood*, 385 U.S. at 428-30; *see generally* Hardin, *The Developing Labor Law* 1003-07.

While some overlapping jurisdiction was acceptable, Congress did not intend Section 301 to give the courts authority to regulate the collective bargaining process or to define federal law in that area. A wholesale reintroduction of the courts into the regulation of labor relations would have been entirely inconsistent with the

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[11] *See also William E. Arnold Co.*, 417 U.S. at 15-19; *Sinclair Refining Co.* v. *Atkinson* , 370 U.S. 238, 245 n.5 (1962), *overruled on other grounds, Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970); *Lucas Flour Co.*, 369 U.S. at 101 n.9; *see also Dowd Box*, 368 U.S. at 513 (holding that *Garmon* preemption does not apply to suits for violation of labor contracts brought in state court).

structure and philosophy of the NLRA and would have resulted in extensive and undesirable overlap between the jurisdiction of the Board and the courts. Accordingly, in enacting Section 301, Congress carved out only a limited role for the federal courts in enforcing collective bargaining agreements. Section 301(a) limited the courts' jurisdiction to "[s]uits for violation of contracts." 29 U.S.C. § 185(a).

## II. THE UNION'S CLAIM DOES NOT FALL WITHIN THE LIMITED SCOPE OF SECTION 301.

The plain language of Section 301(a) confers federal jurisdiction only over "[s]uits for violation of contracts." 29 U.S.C. § 185(a). This restriction upon the jurisdiction of the federal courts is confirmed by both the legislative history of the section and the overall structure of the NLRA. Indeed, expanding the jurisdiction of the federal courts beyond the limits of the plain language of Section 301(a) would create an unnecessary and unjustified intrusion upon the generally exclusive authority of the Board over the collective bargaining process.

### A. The Plain Language Of Section 301(a) Grants Federal Jurisdiction Only Over Suits That Allege The Violation Of A Collective Bargaining Agreement.

It is well-settled that in interpreting a statute, one must "look first to its language, giving the words used their ordinary meaning." *Moskal v. United States*, 498 U.S. 103, 108 (1990) (quotation and citation omitted). The language of Section 301(a) provides:

> *Suits for violation* of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to amount in controversy or without regard to the citizenship of the parties.



29 U.S.C. § 185(a) (emphasis added).[12] While this language authorizes federal courts to hear suits "for violation" of a collective bargaining agreement, it plainly does not authorize them to consider suits that do not even allege the violation of an agreement. Indeed, if Section 301(a) were extended to cover all suits relating to contractual disputes without regard to whether a violation was present, then the words of limitation "for violation" would be rendered meaningless. It is well-settled, however, that "[s]tatutes must be interpreted, if possible, to give each word some operative effect." *Walters v. Metropolitan Educ. Enter., Inc.*, 117 S. Ct. 660, 664 (1997) (citation omitted).

Largely ignoring this language, the Third Circuit assumed that "Congress intended that the courts resolve disputes of a contractual nature." Pet. App. 10a. The best evidence of Congress' intent is, however, "the statutory text adopted by both Houses of Congress and submitted to the President." *West Virginia Univ. Hosps. Inc. v. Casey*, 499 U.S. 83, 98-99 (1991); *see also Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what is says there.") (citations omitted). Here, that text belies any notion that Congress intended to extend federal jurisdiction over all disputes relating to collective bargaining agreements. If Congress had so desired, it could easily have granted jurisdiction over suits "concerning" or "relating to" labor contracts rather than just "[s]uits *for violation* of contracts." Since Congress did not use such broad language, Section 301(a) cannot be read to extend federal jurisdiction over suits that do not allege the violation of a collective bargaining agreement. *See Casey*, 499 U.S. at 99.

The analysis need not proceed any further. As this Court has recognized on numerous occasions, "when a statute speaks with

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[12] Although Section 301(a) applies to all contracts between labor organizations and employers, as well as to contracts between labor organizations, for the sake of convenience this brief refers simply to collective bargaining agreements.

clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 295 (1995) (quotation omitted).[13] The language of Section 301(a) cannot be stretched to cover suits that do not allege the violation of a collective bargaining agreement, and there are no extraordinary circumstances requiring this Court to ignore the plain language of this section. It follows that Section 301(a) cannot be interpreted to grant the federal courts jurisdiction over suits such as this one that do not allege the violation of a collective bargaining agreement.

The plain meaning rule applies with particular force where jurisdictional statutes are involved. "Federal courts are courts of limited jurisdiction." *Kokken v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). As a consequence, it is well-settled that "[j]urisdictional statutes are to be construed with precision and with fidelity to the terms by which Congress has expressed its wishes." *Bread Political Action Comm. v. FEC*, 455 U.S. 577, 580-81 (1982) (quotation omitted); *accord Palmore v. United States*, 411 U.S. 389, 396 (1973); *Cheng Fan Kwok v. INS*, 392 U.S. 206, 212 (1968); *Utah Junk Co. v. Porter*, 328 U.S. 39, 44 (1946). Indeed, "[i]t is to be presumed that a cause lies outside [the] limited jurisdiction" of the federal courts. *Kokken*, 511 U.S. at 377 (citation omitted). As a consequence, the limitation that the plain language of Section 301(a) imposes upon the jurisdiction of the federal courts cannot be ignored.

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[13] *See, e.g., Brown v. Gardner*, 513 U.S. 115, 120-21 (1994); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 409-10 (1993); *Germain*, 503 U.S. at 254; *Ardestani v. INS*, 502 U.S. 129, 135 (1991); *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989); *Garcia v. United States*, 469 U.S. 70, 75 (1984); *Rubin v. United States*, 449 U.S. 424, 430 (1981); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).



The majority of lower courts to consider the issue have concluded that Section 301(a) is limited to suits for violation of collective bargaining agreements. *See, e.g., A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers*, 799 F.2d 142, 145 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987); *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972); *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 (6th Cir. 1989); *Corvallis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38, 44 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967). These courts have recognized that "under Section 301(a), district courts possess subject matter jurisdiction in cases involving an alleged violation of an existing collective bargaining agreement" but not in cases merely raising "questions of the *validity* of collective bargaining agreements." *Heussner*, 887 F.2d at 676; *see also Corvallis*, 419 P.2d at 44 ("[I]f any significance is to be given to the words 'for violation of contracts' a suit such as the present one does not come within its embrace."). The decision below and the others that have broadened the statute to include disputes of a "contractual nature"[14] cannot reconcile their interpretations with the language of the statute. Indeed, for the most part, they simply ignore the language of Section 301(a).

### B. The Legislative History Confirms The Limited Scope Of Section 301(a).

The legislative history — to the extent that it is relevant — does not contradict the plain meaning of Section 301(a). To the contrary, it confirms that Congress intended to confer federal jurisdiction only where there was a violation of a collective bargaining agreement.

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[14] *See International Bhd. of Electrical Workers v. Sign-Craft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321, 1326 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989); *McNally Pittsburgh, Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 619 (10th Cir. 1987).

As this Court has observed, "[t]he direct antecedent of § 301 was § 10 of the Case bill, which was passed by both Houses of Congress, but vetoed by the President in 1946." *Dowd Box*, 368 U.S. at 509 (citation omitted). That portion of the Case bill provided in pertinent part:

> *In the event of a breach of any such [labor] contract* or of any agreement contained in such contract by either party thereto, then, in addition to any other remedy or remedies existing, *a suit for damages for such breach* may be maintained by the other party or parties in any State or United States district court having jurisdiction over the parties.

H.R. 4908, 79th Cong., 2d Sess., § 10 (1946) (emphasis added), *reprinted in Lincoln Mills*, 353 U.S. at 487. This provision is plainly limited to situations in which a collective bargaining agreement has been violated: it applies only "[i]n the event of a breach" and only to a "suit for damages for such breach." *Id.* Although Section 10 of the Case bill was later revised in the Senate into its present form, there is no evidence that the revision was intended to expand federal jurisdiction. To the contrary, Representative Case assured his colleagues that Section 301 "carr[ied] out the same purpose we had in the House Bill." 92 Cong. Rec. 5930 (1946). This Court has therefore recognized Section 301 as just a "slightly recast version of § 10 of the Case bill." *Dowd Box*, 368 U.S. at 511.

The legislative history also shows that Congress perceived a clear distinction between enforcement of collective bargaining agreements and the regulation of conduct during the collective bargaining process. As mentioned above, *see supra* p. 17, the Senate considered making it an unfair labor practice to "violate the terms of a collective-bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration." S. 1126, 80th Cong., 1st Sess., tit. I (proposed Sections 8(a)(6) & 8(b)(5)), *reprinted in* I *Legislative History* 111, 114. In so doing, the Senate was drawing a distinction between misconduct during the collective bargaining process, which was already an unfair labor practice, *see* 29 U.S.C. § 158(a)(5) (making it an unfair labor



practice to "refuse to bargain collectively"), and violation of the terms of completed collective bargaining agreements, which was not. Since Section 301 covers only "violations" of collective bargaining agreements, Congress could not have understood that language to encompass fraud and other misconduct in the collective bargaining process.

Nor is there any reason to think that any intent to expand federal jurisdiction beyond that conferred by the plain language of Section 301 (a) would have gone unmentioned during the legislative debates. The Taft-Hartley Act was, according to Senator Taft, "considered in more detail and more thoroughly studied" than any enactment in his experience. 93 Cong. Rec. 3614 (1947). Opponents of Section 301 specifically challenged the section on the ground that it would "impose a needlessly increased burden on the Federal courts." S. Rep. No. 105, 88th Cong., 1st Sess., Part 2, at 14 (minority report), *reprinted in* I *Legislative History* 475. Nevertheless, there was no suggestion that Section 301 would allow any dispute of a contractual nature to be brought in federal court. To the contrary, the opponents of Section 301 consistently recognized that the section would apply to breaches or violations of collective bargaining agreements.[15]

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[15] *See, e.g.*, S. Rep. No. 1177, 79th Cong., 2d. Sess. 8-9 (1946), *reprinted in Lincoln Mills*, 353 U.S. at 493-94 ("By offering easy access to the courts *in cases where a breach of a collective bargaining agreement is alleged*, [Section 301] would act as an inducement to litigate every alleged grievance, and would result in a flood of litigation.") (emphasis added); 92 Cong. Rec. 5412 (statement of Sen. Magnuson) (noting that Section 301 would extend federal jurisdiction over suits "*for breach* of a collective-bargaining agreement") (emphasis added); *id.* at 5413 (statement of Sen. Magnuson) ("I see no reason why it is necessary for the Federal Government to invade the realm of the States to such an extent as to furnish them laws governing suits *for breaches* of purely private contracts") (emphasis added).

Thus, far from endorsing court involvement in all disputes of a contractual nature, the legislative history shows Congress intended to limit federal courts to redressing contract violations.

### C. Extending Federal Jurisdiction Beyond The Limits Of The Plain Language Of Section 301(a) Would Bring The Federal Courts Into Unnecessary And Unjustified Conflict With The Labor Board.

The Third Circuit found its interpretation of Section 301(a) "buttressed in policy terms" because it saw no reason to permit the union to raise fraudulent inducement as an affirmative defense to a suit to enforce the collective bargaining agreement while preventing it from raising the same claim to invalidate the agreement. Pet. App. 10a. In fact, there is a significant and compelling reason for the different treatment: the generally exclusive authority over the collective bargaining process that Congress entrusted upon the National Labor Relations Board. While conferring jurisdiction over the enforcement of collective bargaining agreements creates some overlap between the jurisdiction of the courts and that of the Board, the potential for conflict is limited and the reasons for tolerating this potential compelling. Where, however, consideration of a claim such as the union's, that is based upon misconduct during the collective bargaining process, is divorced from any construction of the terms of a collective bargaining agreement, the potential for conflict is heightened and the reasons for tolerating such conflict disappear. As a consequence, permitting suits to invalidate contracts based upon conduct during the negotiation process creates an unnecessary and unjustified intrusion upon the primary jurisdiction of the Board.

In a suit for the violation of a collective bargaining agreement, the risk of conflict between the courts and the Board is generally limited. *See* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. 529, 570 (1963) ("In the great mass of cases clashing mandates are impossible.") The vast majority of such disputes deal with purely contractual issues such as wages, fringe benefits, work assignments, promotions, layoffs,



management rights, discipline, and discharge. *See* Research Committee of the National Academy of Arbitrators, *Labor Arbitration in America: The Profession and Practice* 87 (1992).[16] Because the NLRA is "concerned primarily with establishing an equitable process for determining terms and conditions of employment, and not with particular substantive terms of the bargain that is struck," *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 753 (1985),[17] consideration of such issues by courts and arbitrators does not rise a significant potential for conflict with the Board's administration of the NLRA.

The court cases that potentially overlap with the matters within the Board's jurisdiction — cases involving disputes over alleged discrimination against union members, the permissibility of strikes, and other union activities — constitute a very small percentage of the overall number of labor arbitration cases. According to the Federal Mediation and Conciliation Service, from 1992 to 1995, such cases constituted less than four percent of the labor cases involving arbitrators on the Service's roster. Federal Mediation and Conciliation Service, *Forty-Eighth Annual Report* 40 (1995). Figures reported by the American Arbitration Association are similar. *See* American Arbitration Association,

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[16] Almost all disputes over the meaning of collective bargaining agreements are presented to arbitrators. Nearly every collective bargaining agreement calls for binding arbitration, *see Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 411 n.11 (1988), there is a strong presumption that disputes are arbitrable, *see, e.g., Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 377-79 (1974); *Warrior & Gulf*, 363 U.S. at 584-85), and courts are not permitted to consider the merits of an arbitrator's decision, *see, e.g., United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36-38 (1987); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596-98 (1960).

[17] *See also H.K. Porter Co.*, 397 U.S. at 106 (noting that the Board does not regulate "wages, hours, and other terms and conditions of employment").

*Case Reports Provide Profile of Labor Arbitration Case*, Study Time, No. 4, 1989, at 2 (approximately 3.3%).

To be sure, as described above, there will be some instances of overlapping jurisdiction — where the Board and the courts will have to adjudicate similar or even the same issues. But in these instances, enforcement of collective bargaining agreements in the face of potential conflict with the Board is supported by a compelling justification: the need for court interpretation of the language of the agreements either directly or by reference to arbitration. Where the NLRA and a collective bargaining agreement both regulate the same conduct, courts and arbitrators perform an important and independent role. "[A]lmost never does a contractual prohibition of an unfair labor practice exist without also implicating a part of the relationship between the employer and the union which rests wholly on their agreement." Dunau, *Contractual Prohibition of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum. L. Rev. 52, 80 (1957); *accord* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 557. If breach-of-contract claims that overlapped with an unfair labor practice were prohibited, parties would be unable to enforce the many contractual obligations that augmented or extended the protections conferred by the NLRA.

Indeed, even where a provision in a collective bargaining agreement simply duplicates a statutory protection, the parties have agreed upon something more than the standard by which certain conduct may be judged and the remedies that will be available: they have also agreed upon the method by which it will be judged. *See* Dunau, *Contractual Prohibition of Unfair Labor Practices*, 57 Colum. L. Rev. at 66-68; Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 557. Since "[t]he ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace," *Lucas Flour*, 369 U.S. at 104, federal policy dictates that any conflict created by the consideration of suits governed by the terms of a collective bargaining agreement and the corresponding statutory remedy be tolerated. *See Hines*, 424 U.S. at 562.



In other situations, the overlap between Board jurisdiction may be the result of an affirmative defense to contract enforcement. For example, in *Kaiser Steel Corp. v. Mullins*, the petitioner defended against a breach-of-contract claim by contending that the clause allegedly breached was an illegal, and therefore unenforceable, "hot-cargo agreement" under the NLRA. *See* 455 U.S. at 76. The courts have a compelling reason to entertain affirmative defenses in breach-of-contract claims: their "duty to determine whether a contract violates federal law before enforcing it." *Id.* at 83.[18] "Were the rule otherwise, parties could be compelled to comply with contract clauses, the lawfulness of which could be insulated from review by any court." *Id.* at 86. For the same reason, before enforcing an agreement, courts must adjudicate affirmative defenses such as fraud based upon conduct occurring in the collective bargaining process.

There is no similar justification for creating overlapping jurisdiction, and potential conflicts between the courts and the Board, where the courts have no role to play in contractual interpretation and the Board has been granted full authority to afford relief.[19] As discussed below, that is exactly the situation here. Certainly, federal jurisdiction is not needed here in order to avoid forcing the union to resort to self-help: as the unfair labor practice charge filed in this case demonstrates, the union had the option of filing an unfair labor charge before the Board, which can not only award damages based upon misconduct such as fraud during the collecting bargaining process, *see, e.g., NLRB*

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[18] *See also* Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations*, 59 Colum. L. Rev. 269, 291 (1959) (noting the "undesirability of fragmenting jurisdiction when unfair labor practices are urged as a defense in an action on a collective bargaining agreement").

[19] *See* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 572 ("If for some definable class of cases involving collective agreements it could be said . . . that the Board can give all that the courts can give, application of *Garmon* would be appropriate.")

*v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263 (1969), but can also invalidate contracts based upon such misconduct, *see, e.g., National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940); *Waymouth Farms, Inc.*, Nos. 18 CA 12766 and 12891, 1997 WL 693024, at *4 (NLRB Oct. 31, 1997).[20] Furthermore, it cannot be argued that the courts are more competent to consider issues such as fraud since there is no question as to the interpretation of the contract language. The Board with its long experience in the collective bargaining process is much better-suited to determine whether information not supplied during collective bargaining was relevant and whether the claimed reliance was either real or reasonable. As a consequence, there is no apparent justification for permitting the federal courts to consider suits such as this one which seek to invalidate a collective bargaining agreement and which do not seek to redress the violation of such an agreement.

This Court has previously made clear that Section 301 should be construed to avoid overlapping jurisdiction between the courts and the Board where possible. In *Retail Clerks International Association, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17 (1962), this Court considered whether a contract negotiated by a union that had not been recognized as an exclusive bargaining representative may be enforced under Section 301(a). *See id.* at 28-29. In so doing, this Court noted that "if the federal courts' jurisdiction under § 301(a) required a preliminary determination of the representative status of the labor organization involved, potential conflict with the National Labor Relations Board would be increased . . . ." *Id.* at 29 (citations omitted). It therefore held that the courts should not adjudicate

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[20] While the Board cannot award the punitive damages the union seeks, *see, e.g., Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 288 n.5 (1986) ("Punitive sanctions are inconsistent . . . with the remedial philosophy of the NLRA."), punitive damages are not available in breach-of-contract actions under Section 301(a) either. *See Commissioner of Internal Revenue v. Schleier*, 515 U.S. 323, 343 (1995) (O'Connor, J., dissenting) ("Punitive damages are traditionally available only in tort.").



the issue of representative status, in part, because such adjudications would increase the potential for conflict. *See id.* Similarly, here, Section 301 should not be construed to create unnecessary overlapping jurisdiction.

### D. The Union Here Does Not Allege Any Violation Of A Collective Bargaining Agreement.

Although the union's suit here relates to the 1994 collective bargaining agreement between the UAW and Textron Lycoming, it does not allege any violation of that agreement. To the contrary, most of the conduct alleged in the complaint occurred between October 1993 and March 1994, prior to the agreement's April 1, 1994, effective date. J.A. 4, 17-18. The only alleged conduct that occurred after the effective date of the agreement was Textron Lycoming's announcement that it planned to subcontract parts production. J.A. 18. The collective bargaining agreement, however, expressly recognized the company's right to subcontract out work historically performed by union members so long as the union was "advised of such potential contract seven (7) working days prior to contracting out of the work." J.A. 15. As there is no allegation that Textron Lycoming failed to provide adequate notice, the complaint clearly does not allege any violation of the collective bargaining agreement.

Nor does the union's complaint seek to enforce the collective bargaining agreement between Textron Lycoming and the UAW. Instead, the complaint seeks to invalidate the agreement, asserting that Textron Lycoming made "material misrepresentations" to the union during the negotiation of the agreement and that the union relied upon those misrepresentations in agreeing to the 1994 collective bargaining agreement. The complaint therefore asserts that the agreement is "voidable at the option of the UAW" and seeks a declaratory judgment "that the existing collective bargaining agreement between the parties is voidable at the option of Plaintiff UAW." J.A. 18-19. Thus, the union's suit is plainly not "for violation" of a collective bargaining agreement.

It makes no difference that the union sought a declaratory judgment. It is true that Congress intended Section 301 to make

available not just damages, but a range of remedies including suits "under the Declaratory Judgment Act in order to secure declarations from the court of legal rights under the contract." 93 Cong. Rec. 3656 (Statement of Rep. Barden); *accord Lincoln Mills*, 353 U.S. at 456. The availability of a declaratory judgment remedy does not, however, expand the subject matter jurisdiction of the federal courts. *See, e.g., Skelly Oil Co. v. Philips Petroleum Co.*, 339 U.S. 667, 671-72 (1950) (holding that the subject matter jurisdiction of the federal courts is "not altered by the Declaratory Judgment Act").[21]

As the complaint filed by the union demonstrates, this case presents a controversy that is essentially the same as one that could have been, and was in fact, brought before the Board. The factual allegations are nearly identical. Like the unfair labor practice complaint filed by the Board, the district court complaint filed by the union alleges that, during negotiations over the 1994 collective bargaining agreement, the union requested information concerning Textron Lycoming's future subcontracting plans, and that Textron Lycoming failed to disclose those plans, thereby fraudulently inducing the union to agree to sign the agreement. *Compare* J.A. 17-19 *with* J.A. 25-26.

Moreover, the key element of the union's case is the same as the key element of the Board's. In order to void the collective bargaining agreement based upon fraud, the union would have to prove that its assent to the collective bargaining agreement was "induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying."

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[21] Nor does this Court's decision in *Dowd Box* suggest otherwise. While the plaintiffs in that case sought a declaration that "there existed a valid and binding collective bargaining agreement," they also alleged that their employer had announced that it would not honor a settlement agreement with the union. *See Dowd Box*, 368 U.S. at 504. This is, of course, a contractual violation: namely, a breach by anticipatory repudiation. *See, e.g., Roehm v. Horst*, 178 U.S. 1, 7 (1899); *see generally* Restatement (Second) of Contracts § 250 (1981).



Restatement (Second) of Contracts § 164(1) (1981). Similarly, in order to show that Textron Lycoming failed to bargain in good faith, the Board would have to show that there was a duty to bargain over the decision to subcontract (*see supra* p. 12 n. 7) and that the information withheld was relevant to the issues being negotiated. *See Architectural Fiberglass*, 165 NLRB 238, 240 (1967); *see generally NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Thus, as courts have recognized, a claim of fraud based upon as alleged failure to disclose information during the collective bargaining process is essentially "indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB." *Kolentus v. AVCO Corp.*, 798 F.2d 949, 961 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987); *accord Parker v. Connors Steel Co.*, 855 F.2d 1510, 1516 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d 1279, 1288 (6th Cir. 1986).

Unlike the situation in which an unfair labor practice is raised as a defense, the union here seeks an affirmative remedy for conduct that could have formed the basis for an unfair labor practice claim. Should the union prevail, a conflict in the remedies is virtually certain. As mentioned above, the union here seeks a declaration that the collective bargaining agreement is voidable at its option. J.A. 19. It requested that the Board seek similar relief in the unfair labor practice proceeding. *See supra* p. 5. The Board chose to exercise its discretion to seek only to prohibit Textron Lycoming from relying upon the subcontracting clause. J.A. 26. It is well-settled, however, that under the NLRA "conflict is imminent whenever two separate remedies are brought to bear on the same activity." *Wisconsin Dep't of Indus v. Gould, Inc.*, 475 U.S. at 282, 286 (1986) (quotation omitted); *see also Lockridge*, 403 U.S. at 287 ("Conflict in technique can be as fully disruptive to the system Congress erected as conflict in overt policy."). As a consequence, this case presents an unprecedented intrusion upon both the substantive and the remedial authority of the Board.

Finally, there is no justification for this intrusion. The Board is more than capable of assessing whether the information

allegedly withheld should have been disclosed, and it is clearly better suited than any court to consider Textron Lycoming's defense that the decision to outsource machining work was a fundamental change in the business that is not even subject to bargaining.[22]

As a consequence, there is no reason to ignore the limitations upon federal jurisdiction imposed by the plain language of Section 301(a). The union's claim was properly dismissed for lack of subject matter jurisdiction by the district court.

## III. IN ANY EVENT, SECTION 301(a) DOES NOT PERMIT THIS SUIT, WHICH IS IN ESSENCE A TORT CLAIM FOR FRAUD.

Even if the union were correct and Section 301(a) did extend beyond its plain language to encompass claims of a contractual nature, Section 301 would not permit this action. The union's claim is not based upon contract. It is instead essentially a tort claim for fraud. As a consequence, even if disputes of a

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[22] As Textron Lycoming pointed out to the Board, *see* Letter from Brian Steinbach to Barry Kearney, June 2, 1995, at 1-3, in the last fifteen years, the market for the single piston engine products produced by Textron's Lycoming division has declined dramatically, leading to a reduction in engine production of over 90%. This change has made maintaining machining equipment and associated manufacturing processes prohibitively expense. Indeed, at present production levels, for some parts the overhead cost alone is greater than the price at which the part can be sold. Petitioner therefore decided in the spring of 1994 to change the nature and direction of its enterprise: to go out of the business of manufacturing engines and focus instead on assembling the engines still being purchased, overhauling existing engines, and distributing spare parts. This decision, petitioner will argue, is a core entrepreneurial decision over which the company was not required to bargain. *See First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686 (1981) (holding that decision to "shut down part of its business for purely economic reasons" is not a subject "over which Congress has mandated bargaining"); *see also Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 217-26 (1964) (Stewart, J., concurring).



contractual nature were within Section 301, that section would not save this suit from preemption under the *Garmon* doctrine. *See supra* pp. 13-14 (discussing the doctrine).

This Court has held that parties may not escape preemption under Section 301 by simply "relabeling as tort suits actions simply alleging breaches of duties assumed in collective-bargaining agreements." *Livadas v. Bradshaw*, 512 U.S. 107, 123 (1994) (quotation and citation omitted); *see also Steelworkers v. Rawson*, 495 U.S. 362, 371-72 (1990) ("Pre-emption by federal law cannot be avoided by characterizing the Union's [conduct] pursuant to the terms of the collective-bargaining contract as a state-law tort."); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985) (refusing to permit parties "to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract").[23] As this Court has stated, "It is not the label affixed to the cause of action . . . that controls the determination of the relationship between state and local jurisdiction." *Local 100, United Ass'n of Journeymen & Apprentices v. Borden*, 373 U.S. 690, 698 (1963).

This is, however, exactly what the union, by labeling its claim as a contract claim, attempted to do here. The complaint in this case actually alleges a tort claim for fraud. It asserts that Textron Lycoming represented to the union that it had no plans to subcontract out bargaining unit work, that this representation was both material and false, that the union relied upon this false misrepresentation, that the union's reliance was reasonable, and that the union suffered injury as a result. J.A. 17-19. Moreover, the complaint does not merely seek a declaration that the agreement was voidable, as a complaint raising an affirmative defense of misrepresentation under contract law would. *See* Restatement (Second) of Contracts § 164. The complaint also seeks "compensatory and punitive damages." J.A. 19. As

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[23] Similarly, parties may not escape preemption under *Garmon* "simply by casting statutory claims as violations of the union's duty of fair representation." *Communications Workers v. Beck*, 487 U.S. at 743.

"[p]unitive damages are traditionally available only in tort" (*Commissioner of Internal Revenue v. Schleier*, 515 U.S. 323, 343 (1995) (O'Connor, J., dissenting)), it is clear that the union has not brought a contract claim. It has instead brought a tort claim, which is not saved from *Garmon* preemption by Section 301.

Under *Garmon*, "[w]hen an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board . . . ." *Garmon*, 359 U.S. at 245. The activity at issue here — Textron Lycoming's alleged failure to disclose its future subcontracting plans — is clearly subject to Section 8 of the Act. That section requires employers to "bargain collectively" and "confer in good faith," 29 U.S.C. §§ 158(a)(5) & (d), a duty that includes the "general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *Acme Industrial Co.*, 385 U.S. at 435-36 (citation omitted). Accordingly, as the complaint issued by the Board demonstrates, the union's claim falls squarely within the Board's ordinarily exclusive jurisdiction.

It should come as no surprise that the lower courts have found fraud claims based upon the alleged failure to disclose information during bargaining to be "indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB" and therefore have held them to be preempted under *Garmon*. *Kolentus v. AVCO Corp.*, 798 F.2d at 961; *accord Parker v. Connors Steel Co.*, 855 F.2d at 1516; *Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d at 1288.

It is, of course, true that in *Smith v. Evening News Association* this Court held that the "authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract . . . is not exclusive and does not destroy the jurisdiction



of the courts in suits under § 301." 371 U.S. at 197.[24] There is, however, no "unfair labor practice which also violates a collective bargaining contract" in this case for the simple reason that the union has not alleged any violation of the terms of a collective bargaining agreement. The "strong policy favoring judicial enforcement of collective bargaining agreements" (*Hines*, 424 U.S. at 562), which saves most suits under Section 301 from *Garmon* preemption, is obviously inapplicable where, as here, the suit seeks not to enforce a collective bargaining agreement, but to invalidate it. *Smith v. Evening News* should therefore not be extended to protect claims such as the union's here from preemption under *Garmon*.

This Court has previously recognized the limited scope of the "*Smith v. Evening News* principle." In *Motor Coach Employees v. Lockridge*, the plaintiff was a union member who had been suspended from the union for late payment of dues and, at the union's request, terminated from employment pursuant to a union security clause. *See* 403 U.S. at 278-79; *see also* 29 U.S.C. § 158(a)(3) (authorizing union security clauses). The plaintiff alleged that he had been improperly suspended and that the union's constitution contained a "promise, implied in law, that the Union would not seek termination of his employment unless he was sufficiently derelict in his dues payments to subject him to loss of his job under the applicable collective-bargaining agreement." *Lockridge*, 403 U.S. at 279. Much like the union here, the plaintiff in *Lockridge* argued, among other things, that Section 301 protected his claim from preemption. *See id.* at 298. This Court rejected the argument and held the plaintiff's claim preempted under *Garmon*. *See id.* at 301-02.

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[24] Even, however, in the area of contract enforcement, *Garmon* is not entirely inapplicable. *Smith v. Evening News* specifically refused to hold that all such claims are exempt from preemption under *Garmon*. Instead, this Court stated that if "there are situations in which serious problems will arise from both the courts and the Board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise." 371 U.S. at 197-98.

In so doing, this Court recognized a significant limitation upon the reasoning in *Evening News*. Although suits under Section 301 are generally exempt from preemption under *Garmon*, this exemption is based upon a "legislative determination that courts are fully competent to resolve labor relations disputes *through focusing on the terms of a collective bargaining agreement*." *Lockridge*, 403 U.S. at 300 (emphasis added). When, however, the terms of a union-employee contract have been implied as a matter of law, this rationale does not apply: "the principle of *Smith v. Evening News* is applicable only to those disputes that are governed by the terms of the collective-bargaining agreement itself." *Id.* at 300-01.

By the same token, even if the union's claim were covered by Section 301, Section 301 would not save it from preemption under *Garmon* because the union's claim here is based upon alleged misconduct during the collective bargaining process and is not in any way governed by the terms of the collective bargaining agreement.



## CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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